

**REMARKS**

Upon entry of the instant Amendment, claims 1-12 will be pending in the application. By this amendment, claims 1, 8 and 10 will have been amended. No new matter is added. Support for the amendment to claims 1, 8 and 10 can be found on paragraph [0022] of the published version of the instant application, i.e., US No. 2003/0140013. Reconsideration of the rejected claims in view of the above amendments and the following remarks is respectfully requested.

***35 U.S.C. § 101 Rejection***

Claims 1-12 were rejected under 35 U.S.C. § 101 for being allegedly being directed to non-statutory subject matter.

While Applicants respectfully disagree that the above-noted claims do not recite tangible and/or structural subject matter, Applicants have, in an effort to advance prosecution, amended claims 1, 8 and 10 to recite additional tangible and/or structural subject matter of a computing device.

Thus, Applicants respectfully submit that claims 1-12 are clearly directed to statutory subject matter.

Accordingly, Applicants respectfully request that the above-noted rejection under 35 U.S.C. § 101 be withdrawn.

**35 U.S.C. § 103 Rejection**

Claims 1-12 were rejected under 35 U.S.C. § 103(a) for being allegedly unpatentable over U.S. Patent Application Publication No. 2002/0040334 to YAMAZAKI in view of U.S. Patent No. 6,338,043 to MILLER.

In order to establish a *prima facie* case of unpatentability under 35 U.S.C. § 103, one or more prior art references must disclose or suggest each and every element as set forth in the subject claim. Applicants respectfully submit that a *prima facie* case of unpatentability cannot be established because the combination of YAMAZAKI and MILLER fails to teach or suggest each and every element of the claims.

More particularly, amended independent claim 1 recites, *inter alia*,

for each unit of a plurality of units of data processing services, determining a level of environmental complexity, a level of change, and a type of environment; for each unit of the plurality of units, assigning points to the unit responsive to its level of environmental complexity, level of change, and type of environment, as determined, and summing the assigned points to provide a count of points for the unit.

Additionally, independent claim 8 recites, *inter alia*,

for each unit of a plurality of units of data processing services, selecting a level of environmental complexity from a plurality of predetermined levels of environmental complexity, selecting a level of change from a plurality of predetermined levels of change, and selecting a type of environment from a plurality of predetermined types of environments; for each unit of the plurality of units, assigning points to the unit responsive to its selected level of environmental complexity, level of change, and type of environment, and summing the assigned points to provide a count of points for the unit.

Finally, independent claim 10 recites, *inter alia*,

determining a level of environmental complexity, a level of change, and a type of environment for a unit to be added to the data processing services;

determining a count of points for the unit to be added, using the level of environmental complexity, level of change, and type of environment; creating one or more RFQ views on a visual interface.

Applicants submit that no proper combination of YAMAZAKI and MILLER discloses or suggests at least these features.

Applicants acknowledges that YAMAZAKI discloses a system which can set a usage fee based on a point system (see paragraphs [0030], [0031] and [0039]). However, this is where any similarity to the instant invention ends. Whereas the invention is directed to a method of determining a per-point price for data processing services by determining a level of environmental complexity, a level of change, and a type of environment, and, for each unit of the plurality of units, assigning points to the unit responsive to its level of environmental complexity, level of change, and type of environment, YAMAZAKI merely relates to a method of setting support fees for users based upon usage history of each user (see paragraph 0010)). Whereas YAMAZAKI assigns points to users based on an inquiry history database (see paragraph [0031]), the instant invention assigns points to the unit responsive to its level of environmental complexity, level of change, and type of environment.

MILLER does not cure the deficiencies of YAMAZAKI. MILLER relates to a method for automatically developing a package of advertising spots from a plurality of offered available spots (see Abstract). There is simply no similarity whatsoever to the invention. Whereas the invention is directed to a method of determining a per-point price for data processing services by determining a level of environmental complexity, a

level of change, and a type of environment, and, for each unit of the plurality of units, assigning points to the unit responsive to its level of environmental complexity, level of change, and type of environment, MILLER is entirely unconcerned with pricing for data processing services.

There is simply no disclosure or suggestion in either of YAMAZAKI and MILLER with regard to: for each unit of a plurality of units of data processing services, determining a level of environmental complexity, a level of change, and a type of environment, and, for each unit of the plurality of units, assigning points to the unit responsive to its level of environmental complexity, level of change, and type of environment, as determined, and summing the assigned points to provide a count of points for the unit; and/or for each unit of a plurality of units of data processing services, selecting a level of environmental complexity from a plurality of predetermined levels of environmental complexity, selecting a level of change from a plurality of predetermined levels of change, and selecting a type of environment from a plurality of predetermined types of environments, and for each unit of the plurality of units, assigning points to the unit responsive to its selected level of environmental complexity, level of change, and type of environment, and summing the assigned points to provide a count of points for the unit; and/or determining a level of environmental complexity, a level of change, and a type of environment for a unit to be added to the data processing services, determining a count of points for the unit to be added, using the level of environmental complexity, level of change, and type of environment, and creating one or more RFQ

views on a visual interface. Nor has the Examiner identified any equivalent language in either YAMAZAKI and MILLER.

Moreover, in addition to failing to disclose the combination of features recited in the above-noted claims 1, 8 and 10, Applicants submit no proper combination of YAMAZAKI and MILLER discloses or suggests the combination of features recited in dependent claims 2-7, 9, 11 and 12, which also respectfully contain all of the features of claims 1, 8 and 10.

Furthermore, to the extent that the Examiner relies upon official notice in support of the instant rejection, Applicants remind the Examiner that MPEP 2144.03 specifically explains that “[o]fficial notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known.” Accordingly, Applicants respectfully request that the Examiner produce documentary evidence to support the Examiner’s assertions to the extent that the Examiner is relying on official notice.

Thus, Applicants respectfully submit that independent claims 1, 8 and 10, and claims 2-7, 9, 11 and 12, which depend from claims 1, 8 and 10 are allowable.

Accordingly, Applicants respectfully request that the above-noted rejection under 35 U.S.C. § 103(a) should be withdrawn.

**CONCLUSION**

In view of the foregoing amendments and remarks, Applicants submit that all of the claims are patentably distinct from the prior art of record and are in condition for allowance. The Examiner is respectfully requested to pass the above application to issue. The Examiner is invited to contact the undersigned at the telephone number listed below, if needed. Any fees required for consideration of the instant response are hereby authorized to be charged to our Deposit Account No. 09-0457.

Respectfully submitted,  
C. W. FELLESTEIN et al.

A handwritten signature in black ink, appearing to read 'Andrew M. Calderon', with a stylized, overlapping loop structure.

Andrew M. Calderon  
Reg. No. 38,093

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GREENBLUM & BERNSTEIN, P.L.C.  
1950 Roland Clarke Place  
Reston, VA 20191  
703-716-1191